

REMARKS

This amendment responds to the office action dated June 15, 2005.

The Examiner allowed claims 28-33.

The Examiner rejected claim 6 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. Claim 6, which depends from independent claim 1, has been amended to recite the limitation of “wherein said method for describing includes a DDL representation syntax for a color structure having the form <complexType name=“ColorStructureType”> . . .” Claim 6, as amended and as supported by the specification at pp. 14-16, fully describes to one of ordinary skill in the art the subject matter encompassed by the claim.

The Examiner also rejected claim 6 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, arguing that it is directed to a computer program not recorded on a tangible medium. The applicants respectfully disagree. Dependent claim 6 depends from independent method claim 1, which is directed to statutory subject matter. The mere fact that a dependent claim adds a limitation, which if standing alone would be non-statutory subject matter, does not make the dependent claim non-statutory. In other words, because dependent claim 6 incorporates all the limitations of independent claim 1, which was not rejected under 35 U.S.C. § 101, it is improper to reject the dependent claim under that section. Therefore, the applicant respectfully requests that the Examiner withdraw the rejections to claim 6.

The Examiner rejected claims 1-5 under the judicially-created doctrine of obviousness-type double patenting, in view of applicants’ prior U.S. Patent Nos. 6,516,100 and 6,542,632. Enclosed is a terminal disclaimer that overcomes the Examiner’s rejection.

The Examiner rejected claims 1-5, 7, 15-21, and 23-27 under 35 U.S.C. § 102(a) as being anticipated by Messing et al., RESULTS OF CE CT3 ON COLOR STRUCTURE HISTOGRAM INTEROPERABILITY, International Organization for Standardization (March 2000). The applicants

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note that the cited publication was co-authored by two of the inventors named on the present application, where the present application was filed within a year of the publication date of the cited reference. Therefore, the cited publication cannot be considered prior art under 35 U.S.C. § 102(a) because it does not demonstrate that the claimed invention was known to others *prior to the invention of the pending claims*; to the contrary, the cited publication simply demonstrates that the present applicants invented the subject matter of the rejected claims prior to March of 2000, when they co-authored a publication including a description of the claimed subject matter. Because the cited reference proves an invention date of the rejected claims prior to March of 2000, the Examiner's rejection based on that reference was improper, and should be withdrawn.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-7, 15-21, and 23-33.

Respectfully submitted,

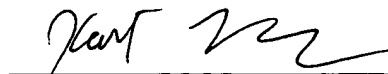


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I hereby certify that a copy of this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: November 15, 2005



Kurt Rohlf